



## FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee solicits comment on the following proposal by April 1, 2017. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to [MCrimJI@courts.mi.gov](mailto:MCrimJI@courts.mi.gov).

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### PROPOSED

The Committee proposes amending M Crim JI 4.5, the instruction for using prior inconsistent statements to impeach witnesses. The Committee determined that the current instruction was confusing and in need of clarification. The amendment is drawn from a federal court instruction. As the entire instruction is being deleted and replaced, the current instruction is shown with strike-through; the language in the proposed replacement, being entirely new, is underlined.

#### **M Crim JI 4.5 Prior Inconsistent Statement Used to Impeach Witness**

~~*{Use the following paragraph if the statement was admitted only to impeach the witness.}*~~

~~(1)—If you believe that a witness previously made a statement inconsistent with [his / her] testimony at this trial, the only purpose for which that earlier statement can be considered by you is in deciding whether the witness testified truthfully in court. The earlier statement is not evidence that what the witness said earlier is true.~~

~~*{Use the following paragraph if the statement was admitted both to impeach the witness and as substantive evidence.}*~~

~~(2)—Evidence has been offered that one or more witnesses in this case previously made statements inconsistent with their testimony at this trial. You may consider such earlier statements in deciding whether the testimony at this trial was truthful and in determining the facts of the case.~~

#### *Use Note*

This instruction is intended to explain to the jury in paragraph (1) that prior inconsistent statements are normally admissible only to impeach a testifying witness. Paragraph (2) addresses those situations in which the out of court statement is admissible both to impeach and as substantive evidence because of non-hearsay or admissible hearsay. *MRE* 801(c) (d), 803, 803A, 804. If the witness is the defendant, use M Crim JI 4.1.\*

**[AMENDED] M Crim JI 4.5 Prior Inconsistent Statement Used to Impeach Witness**

You have heard evidence that, before the trial, [a witness / witnesses] made [a statement / statements] that may be inconsistent with [his / her / their] testimony here in court.

(1) You may consider an inconsistent statement made before the trial [only]<sup>1</sup> to help you decide how believable the [witness' / witnesses'] testimony was when testifying here in court.

(2) If the earlier statement was made under oath, then you can also consider the earlier statement as evidence of the truth of whatever the [witness / witnesses] said in the earlier [statement / statements] when determining the facts of this case.

Use Note

<sup>1</sup> If the statement is admissible only as impeachment, use [only], and do not read (2). If the statement is also admissible as substantive evidence under MRE 801(d)(1), do not use [only] and read both (1) and (2).

Other out-of-court statements that are exceptions to the hearsay rule under MRE 803 may also be admissible as substantive evidence. The court may modify the instruction under appropriate circumstances.